

CLAIMS AND APPLICATIONS

§21.7030 Applications, claims and informal claims.

(a) *Applications.* (1) An individual must file all claims for educational assistance with VA. The claims must be in the form prescribed by the Secretary.

(2) An individual on active duty must consult with his or her service education officer before applying for educational assistance.

(Authority: 38 U.S.C. 3034(a), 3471; Pub. L. 98–525)

(b) *Informal claim.* VA will consider any communication from an individual, an authorized representative or a Member of Congress to be an informal claim if it indicates an intent to apply for educational assistance. Upon receipt of an informal claim, if a formal claim has not been filed, VA will provide an application form to the claimant. If VA receives the application form within one year from the date VA provided it, VA will consider the claim to have been filed on the date VA received the informal claim.

(Authority: 38 U.S.C. 3034(a), 3471; Pub. L. 98–525)

(c) *Enrollment is not an informal claim.* The act of enrolling in an approved school does not in itself constitute an informal claim.

(Authority: 38 U.S.C. 3034(a), 3471; Pub. L. 98–525)

§21.7032 Time limits.

(a) *Scope of this section.* The provisions of this section are applicable to original applications, formal or informal; to reopened claims; and, to the extent indicated in paragraph (f) of this section, to elections to receive educational assistance under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3018B, 3034(a), 3471)

(b) *Abandoned claim.* VA will consider a claim to be abandoned when VA requests evidence in connection with the claim, and the claimant does not furnish the evidence within one year of the date of the request. After the expiration of one year, VA will not take

further action unless a new claim is received.

(Authority: 38 U.S.C. 5103(a))

(c) *New claim.* When a claim has been abandoned, VA will consider any subsequent communication which meets the requirements of an informal claim to be a new claim. VA will consider the date of receipt of the subsequent communication to be the date of the new claim.

(Authority: 38 U.S.C. 3034(a), 3471; Pub. L. 98–525)

(d) *Failure to furnish form or notice of time limit.* (1) VA's failure to furnish any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the periods allowed for these actions.

(2) Time limits within which claimants or beneficiaries are required to act to perfect a claim or challenge an adverse VA decision may be extended for good cause shown. When an extension is requested after expiration of a time limit, the action required of the claimant or beneficiary must be taken concurrently with or prior to the filing of a request for extension of the time limit, and good cause must be shown as to why the required action could not have been taken during the original time period and could not have been taken sooner than it was. Denials of time limit extensions are separately appealable issues.

(Authority: 38 U.S.C. 5101, 5113)

(3) VA's failure to furnish an eligible person notice of the time limit within which evidence must be submitted to complete a claim, or notice of the time limit within which to challenge an adverse VA decision, shall extend the time limit for such action in accordance with the provisions of §3.110 of this chapter.

(Authority: 38 U.S.C. 5101, 5113)

(e) *Time limit for filing a claim for an extended period of eligibility.* A claim for an extended period of eligibility as described in §21.7051 of this part must be received by VA by the later of the following dates:

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(1) One year from the date on which the veteran's original period of eligibility ended.

(2) One year from the date on which the physical or mental disability ceased to prevent the veteran from beginning or resuming his or her chosen program of education.

(Authority: 38 U.S.C. 3031(d), Pub. L. 98-525)

(f) *Time limit for completing certain elections.* An individual who seeks to establish eligibility to receive educational assistance under § 21.7045 must—

(1) Within one year of the date of the VA letter or other written notice to the individual indicating that additional evidence is needed in order to complete the claim, submit that evidence to VA. This time limit may be extended if the individual is able to show good cause for an extension of the period to the date on which he or she actually submits the additional evidence; and

(2) Submit the \$1,200 VA is required pursuant to § 21.7045(c)(2) to collect before educational assistance can be awarded. A delay in submitting the \$1,200 may result in a later effective date for the award to the individual, and in no event will VA accept payment of the \$1,200 from the individual after the last date of eligibility as determined by § 21.7050 or § 21.7051. See § 21.7131(k).

(Authority: 38 U.S.C. 3018B)

[53 FR 1757, Jan. 22, 1988, as amended at 56 FR 11671, Mar. 20, 1991; 58 FR 63530, Dec. 2, 1993; 61 FR 6785, Feb. 22, 1996]

ELIGIBILITY

§ 21.7040 Eligibility for basic educational assistance.

Eligibility for basic educational assistance can be established by:

(a) Some individuals who first become members of the Armed Forces or who first enter on active duty as a member of the Armed Forces after June 30, 1985, and

(b) Some individuals who are eligible for educational assistance allowance under 38 U.S.C. chapter 34.

(Authority: 38 U.S.C. 3011, 3012; Pub. L. 98-525)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28384, July 11, 1990]

§ 21.7042 Basic eligibility requirements.

An individual must meet the requirements of this section, § 21.7044 or § 21.7045 in order to be eligible for basic educational assistance. In determining whether an individual has met the service requirements of this section, VA will exclude any period during which the individual is not entitled to credit for service for the periods of time specified in § 3.15.

(Authority: 38 U.S.C. 3011, 3012, 3018A; Pub. L. 101-510) (Nov. 5, 1990)

(a) *Eligibility based solely on active duty.* An individual may establish eligibility for basic educational assistance based on service on active duty under the following terms, conditions and requirements.

(1) The individual must after June 30, 1985, either—

(i) First become a member of the Armed Forces, or

(ii) First enter on active duty as a member of the Armed Forces;

(2) Except as provided in paragraph (a)(5) of this section the individual must

(i) Serve at least three years of continuous active duty in the Armed Forces, or

(ii) In the case of an individual whose initial period of active duty is less than three years, serve at least two years of continuous active duty in the Armed Forces;

(3) Except as provided in paragraph (a)(6) of this section, the individual before completing the service requirements of this paragraph must either—

(i) Complete the requirements of a secondary school diploma (or an equivalency certificate), or